



Proposed Regulation Agency Background Document

Agency name	Department of Medical Assistance Services
Virginia Administrative Code (VAC) citation	12 VAC 30-30, 30-40 , 30-60, 30-80, and 30-110
Regulation title	Groups Covered and Agencies Responsible for Eligibility Determinations; Eligibility Conditions and Requirements; Standards Established and Methods Used to Assure High Quality Care and Methods and Standards for Establishing Payment Rates; Other Types of Care and Eligibility and Appeals
Action title	“Medicaid Works” a Medicaid Buy-In Program
Date this document prepared	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 *Acts of Assembly*, Chapter 3 Item 302 X. This new program, called “Medicaid Works,” requires the amendment of several subsections of the DMAS regulations in the areas of Medicaid eligibility, new alternative benefit services, and provider reimbursement. The Medicaid Works Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees, who desire to be employed, to have added income that will not count against their eligibility income limits. Presently, Medicaid enrollees who have disabilities, but who still have the capacity to be gainfully employed, could lose their Medicaid eligibility due to excess income if they are employed. This change reduces the financial restrictions to which such enrollees may be subject.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The *Code of Virginia* (1950) as amended, § 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The *Code of Virginia* (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by § 1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The 2006 *Acts of Assembly*, Chapter 3, Item 302 X directed this regulatory action to amend the State Plan for Medical Assistance to implement a Medicaid Buy-In Program designed to include cost sharing provisions. At the time of enrollment in the program, the individual must either be a current Medicaid recipient or meet the income, asset and eligibility requirements for the Medicaid-covered group for individuals who are blind or disabled and have incomes that do not exceed 80 percent of the Federal Poverty Income guidelines.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

This regulatory action is intended to implement a mandated Medicaid Buy-In program per the requirement of the 2006 Appropriation Act. This new program, called "Medicaid Works," requires the amendment of two regulations addressing Medicaid eligibility. One of the issues faced by Medicaid enrollees with disabilities is that, while many of them have the capacity to be gainfully employed, the extra income they earn could cause them to lose their Medicaid eligibility due to excess income. The Medicaid Works Buy-In program will help protect the health and welfare of these citizens of the Commonwealth by creating an incentive for disabled Medicaid enrollees, who desire to be employed, to have added income that will not count against their eligibility income limits. This reduces the financial restrictions to which such enrollees may be subject. This Medicaid Buy-In option provides work incentives that encourage people with disabilities to work or increase their level of work and continue to receive their Medicaid benefits for the very necessary medical care that such disabled persons require.

In addition to standard Medicaid services, this proposed regulation also adds Personal Assistance Services (PAS) for those enrollees for who would otherwise qualify for PAS if they were in a DMAS waiver program.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The Medicaid State Plan sections affected by this regulatory action are Groups Covered and Agencies Responsible for Eligibility Determinations (12 VAC 30-30) and Eligibility Conditions and Requirements (12 VAC 30-40). New to this regulatory action with this proposed regulation stage, the Agency is adding subsections in Standards Established and Methods Used to Assure High Quality Care (12 VAC 30-60) and Methods and Standards for Establishing Payment Rates; Other Types of Care (12 VAC 30-80). The state regulations being created by this action are Working Individuals with Disabilities (12 VAC 30-110-1500 et seq.).

n.b. This new program was implemented through an emergency regulation, which was followed by a proposed regulation that mirrored the emergency stage. Subsequent to the initial filing of the proposed regulation, however, through negotiations with the federal Medicaid oversight authority (the Centers for Medicare and Medicaid Services or CMS), it became clear to DMAS that this package required substantial changes in order to be approved by CMS. To that end, DMAS withdrew the proposed regulation until it obtained final, approved Medicaid Buy-In program language from CMS. In light of the recent CMS approval, DMAS is submitting its amended proposed regulation. This amendment adds a new subsection to the package describing the services available in the Buy-In program (including Personal Assistance Services or PAS), as well as an additional subparagraph to an existing DMAS regulation that describes Medicaid provider reimbursement.

Medicaid eligibility is based upon both income and resource limits. Currently, federal Medicaid eligibility rules do not allow disabled persons to earn a significant amount of income because the extra income they could earn, as well as savings accounts funded from earned income, may cause them to lose their Medicaid eligibility. For purposes of continuing Medicaid eligibility, income that is not spent within the month it is earned is counted as a financial resource. Any money placed in IRS-sanctioned retirement accounts, medical savings or reimbursement accounts, independence accounts or education accounts are counted towards an individual's Medicaid financial resource limit.

This action is intended to complete the implementation of the new Medicaid Buy-In program, called *Medicaid Works*, required by the 2006 Virginia Acts of Assembly, Chapter 3, Item 302 X. *Medicaid Works* is a work incentive initiative requiring the amendment of the Medicaid State Plan regarding eligibility. This innovative program, permitted under section 1902(r) (2) of the *Social Security Act*, is designed to create greater flexibility in establishing Medicaid eligibility for working disabled individuals. The individuals who will be eligible for this program do not comprise a new eligibility group but are within the existing categories for the Aged, Blind, and Disabled Persons having incomes at 80% of the Federal Poverty Income Level. Because one purpose of the program is to provide incentives for disabled Medicaid recipients to become

employed, Medicaid will disregard earned income placed in specialized accounts that enables eligible enrollees to have income above the 80% federal level.

The *Medicaid Works* Buy-In program will help protect the health and welfare of the citizens of the Commonwealth by creating a work incentive for certain Medicaid enrollees with disabilities, if they desire to be employed, to have added income or resources that will not count against their Medicaid eligibility limits. This reduces the financial restrictions to which these enrollees may be subject, and encourages greater responsibility and self-determination in eligible enrollees.

In addition to the eligibility disregard for earned income, the *Medicaid Works* Buy-In program incorporates greater financial resource disregards as well. Once an individual is enrolled in the *Medicaid Works* program, their earned income limits are higher, and any income placed in the approved savings accounts described below are disregarded for eligibility purposes. Disabled persons who participate in *Medicaid Works* will be allowed to have earned income amounts up to 200% of the Federal Poverty Income level. In addition, the *Medicaid Works* program adds the Work Incentive Account, in which enrollees may place a limited earned income amount, which will also be disregarded. Income placed in such accounts may be used for any purposes.

To enroll in *MEDICAID WORKS*, applicants must first establish a Work Incentive (WIN) account at a bank or other financial institution. One or more WIN accounts must be designated by enrollees and used to deposit all earned income and to keep all resources, or savings, above \$2,000 in order to remain eligible for this Medicaid program. By placing the earned income in the WIN account, enrollees in 2007 can have annual earnings as high as \$40,905 and keep resources in the account of up to \$27,577. Amounts deposited in the following types of IRS-approved accounts, which are also designated as WIN accounts, will not count against this resource limit and will not affect eligibility for the program. These include retirement accounts, medical savings accounts, medical reimbursement accounts, education accounts and independence accounts.

If an enrollee leaves the *Medicaid Works* program, any income remaining in the Work Incentive Account is disregarded for up to a year following his withdrawal from *Medicaid Works*. Any income placed in the other IRS-approved accounts described above will continue to be disregarded as long as such individuals remain in the general Medicaid program.

The new changes in this second proposed regulation clarify that once an individual enrolls in the *Medicaid Works* program, he or she has access to all regular Medicaid services, including services associated with Early and Periodic Screening, Diagnosis and Treatment (EPSDT), under normal procedures, for those under the age of 21. Currently, Personal Assistant Services (PAS) are only available to individuals enrolled in DMAS Home and Community-Based Care Waiver programs. Under the changes in this new proposed regulation, however, enrollees in Buy-In now have access to PAS if they would qualify for such services in a Waiver.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

The primary advantage of the proposed regulations to the public is to encourage and enable individuals with disabilities to become employed, which may reduce the level or amount of public benefits that the individual would otherwise consume. These workers with disabilities will also become taxpayers and not just consumers of public resources. Potential program participants must meet the eligibility requirements for the existing Blind and Disabled covered groups (having incomes of less than or equal to 80% of Federal Poverty Income guidelines) so the new Medicaid Buy-In (MBI) program, *Medicaid Works*, will not add new covered lives and medical expenses to burden the Commonwealth. The regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

This is an optional Medicaid covered program and the Commonwealth has substantial flexibility in designing its eligibility requirements. There were greater federal restrictions placed on the scope of services available to offer to Buy-In enrollees; these restrictions were exactly followed in the language of the new proposed regulation. There are no state requirements that are more restrictive than federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

There are no localities that are particularly affected as this program will operate statewide.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to DMAS 600 East Broad Street Richmond, VA 23219. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by the last date of the public comment period. Comments may also be submitted in the public comment forum on the Regulatory Townhall (www.townhall.virginia.gov). The Agency contact person for comments is:

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• Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	FY 06-07 \$170,286 FY 07-08 \$170,286 These are start up costs, not continuing costs.	FY 07-08 \$462,652 GF \$462,652 NGF
Projected cost of the regulation on localities	\$0	
Description of the individuals, businesses or other entities likely to be affected by the regulation	Individuals with disabilities who qualify for Medicaid under the Blind or Disabled covered group (income less than or equal to 80% of federal poverty guidelines) and are working or are able to go to work. Businesses that employ such individuals may find these employees now will be able to work more hours/earn more income and still retain Medicaid coverage.	
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has	Enrollment is not expected to exceed 200 persons in 2007 and so a similar number of businesses may have an employee that is affected, or hire a new employee who is able to work now as a result of the program.	

gross annual sales of less than \$6 million.	
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	There will be no costs to the enrolled individuals or to the businesses for which they work as a result of this regulation. There are no reporting, recordkeeping or other administrative costs for small businesses that employ individuals who participate in this program. Enrolled individuals will be required to periodically provide employment documentation (e.g., pay stubs, other verification) to DMAS.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

DMAS initially requested CMS’ authorization to establish the Medicaid Buy-In (MBI) program, as directed by the 2007 *Act of Assembly* Chapter 3, Item 302, X, through provisions in the DRA. DMAS’ proposal was to enable a subset of the existing Blind or Disabled Medicaid covered group (income less than or equal to 80% of Federal Poverty Income guidelines) to opt into the MBI to earn higher income and gain access to an alternate benefits package including all health care services within Virginia’s State Medicaid Plan, plus Personal Assistance Services (PAS). This alternative would have enabled all qualifying individuals to participate in the MBI regardless of the severity of their disability and their need for PAS, which is currently a non-covered, optional State Plan service in Virginia. CMS declined to exercise the flexibility afforded under the DRA for Virginia’s proposal and denied this alternative.

DMAS is recommending that the disabled persons who elect to participate in *Medicaid Works* be permitted to have income up to 200 percent of the Federal Poverty Income guidelines. Through the use of WIN accounts, persons in this *Medicaid Works* program could have annual gross earned income up to \$40,905 in 2007 and still retain their Medicaid eligibility. DMAS was not required to add PAS to the Buy-In package, but chose to do so in order to create greater incentives to enroll in the program.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

There are no alternative regulatory methods to accomplish the objectives of the legislation. As described above under “Alternatives,” DMAS did attempt an alternate approach to address the legislative intent that was denied by CMS. There will be no adverse impact on small business as a result of this regulatory action, as there is no compliance or reporting requirements for businesses that employ program participants. Small business may, in fact, benefit from this action as it may increase the size of the labor pool, especially with individuals willing to work part-time and with individuals who do not need employer-subsidized health coverage.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The NOIRA was published June 11, 2007 (VAR 23:20). No public comments were received.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; it does encourage greater economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents. It does not strengthen or erode the marital commitment.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
Which VAC section does this refer to??		Residents of long-term care (LTC) institutions and home and community-based services waivers cannot be enrolled in Medicaid Buy-In program, MEDICAID WORKS.	Delete this item from regulations, as this restriction is unnecessary and would not allow LTC and waiver enrollees to participate in the program.
12 VAC 30-30-20			Adds reference to these eligible persons.
	12 VAC 30-40-105		Adds new section for eligibility criteria for individuals with disabilities under the Ticket to Work and Work Incentive Improvement Act.
12VAC 30-40-280			This regulation amends the more liberal income disregards to permit working individuals to earn up to 200% of the Federal Poverty level.
12 VAC 30-40-290			This regulation amends the more liberal methods of treating resources under §1902 (r) (2) of the Act. that includes the provisions for establishing Work Incentive (WIN) Accounts.
	12 VAC 30-60-200		Adds new section describing in detail the provision of services available to Buy-In enrollees, including PAS.
12 VAC 30-80-30		Reimbursement for other Fee-for-service providers.	Adds description of reimbursement for PAS.
	12 VAC 30-110-1500 et seq.		Adds new section which establishes state regulations containing greater details than were submitted to CMS for this program.